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January 4, 2002

Ms. Carmen Suro-Bredie
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington D.C. 20508

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VIA ELECTRONIC TRANSMISSION TO:

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PUBLIC DOCUMENT

Re: Comments on What Action the President Should Take Under Section 203 of the Trade Act of 1974 Regard to Imports of Certain Steel

Dear Ms. Suro-Bredie:

Pursuant to the notice of request for written comments issued by the Office of the United States Trade Representative ("USTR") in the above-referenced proceeding, 66 Fed. Reg. 54321 (Oct. 26, 2001) and the notice of extension of deadline, 66 Fed. Reg. 67349 (Dec. 28, 2001), Galvex Estonia OÜ ("Galvex") respectfully submits the following comments on what action, if any, the President should take under section 203(a) of the Trade Act of 1974, as amended, with respect to corrosion-resistant flat-rolled carbon and alloy steel products.

Two U.S. citizens own Galvex, a newly formed Estonian company. Neither Galvex, nor Estonia generally, exported flat-rolled steel products to the United States during the period of investigation. Galvex broke ground on its hot-dipped galvanizing steel facility in June 2001 and is scheduled to begin production this summer. Galvex's facility, once operational, will be the only steel manufacturing facility in Estonia, a newly independent democratic market economy of 1.3 million inhabitants. It will produce wide thin-gauge material that other producers in the region are unable to produce and for which regional and world demand is expected to continue to grow over both the short (next three-four years) and long term (ten years).

Renewed Request for Exclusion for Estonian Corrosion-resistant Steel:

At the outset, Galvex wishes to reiterate its request for an exclusion for Estonian corrosion-resistant steel, previously submitted to the Committee on November 13, 2001. In their remedy recommendations to the President,¹ five of the six Commissioners proposed tariffs ranging from 20 to 40 percent on all flat-rolled products (except slab and tin mill products). The Commissioners recommended that the President not impose tariffs on imports of certain flat-rolled steel products from Israel and Jordan, and from beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade

¹ Views on Remedy of the Commission, Inv. No. TA-201-73 (Dec. 20, 2001) (the "ITC Remedy Report").

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Preference Act (ATPA).² The reason given for this exclusion was that “[t]he only imports of certain carbon flat-rolled steel during the period of investigation from these countries were small and sporadic.”³ No Commissioner mentioned providing a similar exclusion for Estonia, even though there were no imports of flat-rolled steel from Estonia during the period of investigation and even though, an interested party, Galvex, specifically requested a similar exclusion.

Galvex recognizes that the United States has negotiated trade agreements with Israel, CBERA and ATPA and that the Commission is legally required to state its views with respect to imports from those countries. Nevertheless, Galvex respectfully submits that the President has the authority to exclude from a safeguards remedy imports from *any* country which has not exported to the United States and did not cause any injury to the domestic industry.

Both U.S. law and the Safeguards Agreement permit the imposition of safeguard measures “only to the extent necessary to prevent or remedy serious injury.”⁴ Estonia did not export one pound of steel to the United States and did not in any way participate in any injury to the U.S. steel industry. Where, as here, there have been no imports from a given country during the period of investigation – regardless of whether that country has a separate trade agreement with the United States – the country’s imports cannot have caused the serious injury, and it is not “necessary” to impose safeguard measures on such imports. Nor does Estonia, a country of 1.3 million inhabitants, or Galvex, a relatively small plant producing only corrosion-resistant steel (and only wide, thin-gauge material at that), pose any significant threat to the U.S. steel industry. Accordingly, imposing safeguard measures on corrosion-resistant steel from Estonia would neither remedy nor prevent serious injury to the U.S. industry.

Accordingly, and notwithstanding the Commission’s recommendation, flat-rolled corrosion-resistant steel from Estonia should be excluded from any remedy imposed by President Bush.

(a) Whether to take an action in the form of an increase in duties, a tariff-rate quota, a quantitative restriction, and, if so, the rate of any duty, rate and affected quantity;

Galvex agrees with the five Commissioners that an action, if imposed, should be in the form of a tariff. Galvex disagrees, however, that the same tariff rate should be applied to ALL flat-rolled products. The Commission apparently recommended that “the same additional tariff rate [be applied] on all certain carbon flat-rolled steel so as not to give rise to product-shifting among imports of various types of certain carbon flat-rolled steel, whose production processes are closely interrelated.”⁵

2 ITC Remedy Report at 366 (Views of Commissioners Koplan, Miller and Hillman), 429 (Views of Commissioner Okun, 519 (Views of Commissioner Bragg), and 531 (Views of Commissioner Devaney) (Commissioner Devaney would impose tariffs on CBERA beneficiary countries.)

3 Id. at 366.

4 Article 5.1 of the WTO Safeguards Agreement; 19 U.S.C. §2253(e)(1)(B).

5 ITC Remedy Report at 363.

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In fact, imposing the same tariff on coated flat-rolled products as other flat-rolled products amounts to an embargo on corrosion resistant flat-rolled steel. Coated products sell for significantly higher prices than uncoated products because of the significant costs associated with the coating process. The higher price is a reflection of the cost of coating. Moreover, higher specialty products (such as very thin gauge products) have even higher costs and prices associated with them. These products are still in high demand in the U.S. market. The higher price for these products reflects both the higher cost of production and the higher demand. A flat tariff rate unfairly punishes producers, such as Galvex, who produce those high value added products.

Thus, for example, hot-rolled imports for the January through June 2001 period had an average unit import value of \$276 per short ton⁶, whereas the average unit import value of corrosion-resistant imports for the same period was \$519 per ton.⁷ In fact, the price for very thin gauge products can be far higher, as high as \$900 per ton. If the President applies the same 20 percent tariff on these products, the hot-rolled imports will pay \$55 per ton, the corrosion-resistant imports will pay \$104 per ton and the thin gauge corrosion resistant products will pay \$180 per ton.

In short, the effect of a flat tariff rate is to penalize disproportionately the imports that have higher cost, higher prices and in higher demand in the United States, while the lower-priced imports, which the Commission has faulted with the injury⁸ are subject to lower absolute duties. Thus, contrary to the Commission's belief, a flat tariff rate is likely to encourage product-shifting from higher to lower priced products.

While Galvex opposes any duty, Galvex submits that if duties are imposed, their rates should decline as value added increases to avoid this disproportionate and undesired result. Galvex would suggest the following gradation of tariff rates:

Hot-Rolled	20%
Cold-Rolled	14%
Coated	8%

Such a gradation would ensure that integrated producers do not shift all exports to the low-priced hot-rolled end of the spectrum to minimize the absolute duties paid.

(b) The duration of any action;

Galvex submits that a two-year tariff measure will provide the U.S. industry with time to recover from past injury, while ensuring that future trade patterns are not substantially disturbed.

6 ITC Remedy Report, Information Obtained in the Investigation at FLAT-10.

7 Id. at FLAT-13.

8 See ITC Remedy Report, pages 60-62, for a discussion of the importance of lower-priced imports in causing serious injury.

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(c) Whether to provide trade adjustment assistance;

Galvex has no comment on this issue.

(d) Whether to proclaim procedures to allocate among importers by the auction of import licenses quantities of any product;

If the President determines to impose quotas or tariff-rate quotas and to disregard the Commission's recommendation for a tariff, Galvex respectfully submits that the procedures to allocate quantities between importers should NOT be based on past U.S. imports, as this simply rewards countries and companies that have in the past been responsible for the serious injury in question. Instead the President should create a tiered system whereby countries are assigned into two groups.

1. Countries who did not export to the United States during the Period of Serious Injury (and who otherwise would not receive any quota); and
2. Countries who did export to the United States during the Period of Serious Injury.

The former group would be allocated quota based on the relative capacities of their steel production in any given calendar year. The latter group would, consistent with the Safeguards Agreement, be allocated quota based on their imports during a prior representative period.

This approach is fully consistent with Article 5.2.a of the Safeguards Agreement, which requires Members to "allot to Members having a substantial interest in supplying the product {concerned} shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports of the product, *due account being taken of any special factors which may have affected or may be affecting the trade in the product.*" Countries, such as Estonia, that did not export previously but who are now beginning steel production clearly have a substantial interest in supplying the product concerned, but allocating quota based on past imports would block them from the U.S. market.⁹ This is clearly a special factor in trade in the product and one that permits a departure from a quota allocation system based solely on past exports. The two-tiered system described above would accommodate the interests of both kinds of countries.

(e) Whether to negotiate agreements with foreign countries limiting the export from those countries and import into the United States of the article;

Galvex encourages the U.S. government to negotiate agreements with foreign countries limiting exports from those countries. By negotiating agreements, rather than unilaterally imposing limits, the United States can ensure that the interests of all trading partners – both large and small – are appropriately treated.

⁹ Galvex does not concede its position that the Safeguards Agreement and U.S. law do not authorize the imposition of safeguard measures on imports from countries that cannot have been responsible in any part for the injury in question since under Article 5.1, safeguard measures can be applied "only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment." Nevertheless, even if the President were to conclude otherwise, Galvex believes that safeguard measures that permit such countries to begin exporting to the United States are consistent with Article 5.2 of the Agreement.

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(f) Whether to initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury;

Galvex applauds the decision of the U.S. government and OECD to work on one of the causes of the current worldwide steel over-capacity problem. In doing so, Galvex respectfully suggests that the U.S. government should not view all steel capacity as virtually identical. In particular, the production capacity of modern efficient facilities that meet market demand for high priced specialty items should not be treated interchangeably with inefficient producers that make low demand, low priced steel products.

For example, the Galvex facility will process wide, thin-gauge material that is in high world demand and that other producers in the region are unable to produce:

- The Galvex plant is the first modern galvanizing facility in Eastern Europe.
- Eastern Europe and the former Soviet Union are *net importers* of galvanized steel.
- As industry in the region blossoms, demand for galvanized steel continues to grow.
- Because it now has a domestic galvanized steel industry, Estonia and the region can better attract industrial investments in facilities to produce construction materials, appliances, and automobile parts. In fact, manufacturers of these components have already begun making inquiries to Galvex about locating plants in Estonia to produce high quality goods from Galvex's production.

Factors such as these should be addressed in the context of international efforts to reduce and eliminate inefficient steel over-capacity.

(g) Whether to submit to Congress legislative proposals; and

Galvex has no comment on this issue.

(h) Whether the President should take any other action under the authority of law.

As noted above, Galvex and its U.S. investors respectfully request that the President exercise his authority to exempt Estonian steel exports from any measure ultimately imposed on flat-rolled corrosion-resistant steel imports. In the alternative, they request that the President impose tariff and non-tariff measures in such a way to ensure that Estonian corrosion-resistant steel exports – which were not responsible for any serious injury suffered by the U.S. industry – are not barred from the United States before they even begin and that the value of U.S. investment abroad in a newly emerging democratic economy is not substantially harmed.

Respectfully submitted,

Kay C. Georgi

COUDERT BROTHERS

On behalf of Galvex Estonia OÜ